

§ 365.103 Modified procedure.

The FMCSA will handle licensing application proceedings using the modified procedure, if possible. The applicant and protestants send statements made under oath (verified statements) to each other and to the FMCSA. There are no personal appearances or formal hearings.

§ 365.105 Starting the application process: Form OP-1.

(a) All applicants shall file the appropriate form in the OP-1 series. Form OP-1 for motor property carriers and brokers of general freight and household goods; Form OP-1(P) for motor passenger carriers; Form OP-1 (FF) for freight forwarders of household goods; Form OP-1(W) for water carriers and Form OP-1MX for Mexican motor property carriers. A separate filing fee in the amount specified at 49 CFR 360.3(f) is required for each type of transportation operation.

(b) Obtain the forms at a FMCSA Division Office in each State or at one of the FMCSA Service Centers. Addresses and phone numbers for the Division Offices and Service Centers can be found at: <http://www.fmcsa.dot.gov/aboutus/fieldoffs>. The forms can also be downloaded at: <http://www.fmcsa.dot.gov/factsfigs/formspubs>.

[66 FR 49870, Oct. 1, 2001]

§ 365.107 Types of applications.

(a) Fitness applications. Motor property applications and certain types of motor passenger applications require only the finding that the applicant is fit, willing and able to perform the involved operations and to comply with all applicable statutory and regulatory provisions. These applications can be opposed only on the grounds that applicant is not fit [*e.g.*, is not in compliance with applicable financial responsibility and safety fitness requirements]. These applications are:

(1) Motor common and contract carrier of property (except household goods), Mexican motor property carriers that perform private carriage and transport exempt items, and motor contract carrier of passengers transportation.

(2) Motor carrier brokerage of general commodities (except household goods).

(3) Certain types of motor passenger applications as described in Form OP-1 (P).

(b) Motor passenger "public interest" applications as described in Form OP-1 (P).

(c) Intrastate motor passenger applications under 49 U.S.C. 13902(b)(3) as described in Form OP-1, Schedule B.

(d) Motor common carrier of household goods applications, including Mexican carrier applicants. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The service proposed will serve a useful public purpose, responsive to a public demand or need.

(e) Motor contract carrier of household goods, water contract carrier, household goods property broker, and household goods freight forwarder applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided will be consistent with the public interest and the national transportation policy of 49 U.S.C. 13101.

(f) Water common carrier applications. These applications require a finding that:

(1) The applicant is fit, willing, and able to provide the involved transportation and to comply with all applicable statutory and regulatory provisions; and

(2) The transportation to be provided is or will be required by present or future public convenience and necessity.

(g) Temporary authority (TA) for motor and water carriers. These applications require a finding that there is or soon will be an immediate transportation need that cannot be met by existing carrier service.

NOTE: In view of the expedited time frames established in this part for processing requests for permanent authority, applications

§ 365.109

for TA will be entertained *only* in exceptional circumstances (*i.e.*, natural disasters or national emergencies) when evidence of immediate service need can be specifically documented in a narrative supplement appended to Form OP-1 for motor property carriers, Form OP-1MX for Mexican property carriers, Form OP-1(P) for motor passenger carriers, and Form OP-1(W) for water carriers. TA applications must be filed with the Division Office which has jurisdiction over the area in which applicant's headquarters are located. Initial determinations of TA applications will be made by a Motor Carrier Board.

[59 FR 63728, Dec. 9, 1994, as amended at 60 FR 63981, Dec. 13, 1995; 62 FR 49940, Sept. 24, 1997]

§ 365.109 FMCSA review of the application.

(a) FMCSA staff will review the application for correctness, completeness, and adequacy of the evidence (the *prima facie* case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) All motor carrier applications will be reviewed for consistency with the FMCSA's operational safety fitness policy. Applicants with "Unsatisfactory" safety fitness ratings from DOT will have their applications rejected.

(4) FMCSA staff will review completed applications that conform with the FMCSA's safety fitness policy and that are accompanied by evidence of adequate financial responsibility.

(5) Financial responsibility is indicated by filing within 20 days from the date an application notice is published in the FMCSA Register:

(i) *Form BMC-91 or 91X or BMC 82 surety bond*—Bodily injury and property damage (motor property and passenger carriers; household goods freight forwarders that provide pickup or delivery service directly or by using a local delivery service under their control).

(ii) *Form BMC-84*—Surety bond or Form BMC-85—trust fund agreement (property brokers of general commodities and household goods).

(iii) *Form BMC-34 or BMC 83 surety bond*—Cargo liability (motor property

49 CFR Ch. III (10-1-01 Edition)

common carriers and household goods freight forwarders).

(6) Applicants also must submit Form BOC-3—designation of legal process agents—within 20 days from the date an application notice is published in the *FMCSA Register*.

(7) Applicants seeking to conduct operations for which tariffs are required may not commence such operations until tariffs are on file with the FMCSA and in effect.

(8) All applications must be completed in English.

(b) A summary of the application will be published as a preliminary grant of authority in the *FMCSA Register* to give notice to the public in case anyone wishes to oppose the application.

[59 FR 63728, Dec. 9, 1994, as amended at 60 FR 63981, Dec. 13, 1995]

§ 365.111 Appeals to rejections of the application.

(a) An applicant has the right to appeal rejection of the application. The appeal must be filed at the FMCSA within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 365.113 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) Once the application is filed, the applicant may supplement evidence only with approval of the FMCSA.

(b) Amendments to the application generally are not permitted, but in appropriate instances may be entertained at the discretion of the FMCSA.

§ 365.115 After publication in the FMCSA Register.

(a) Interested persons have 10 days from the date of *FMCSA Register* publication to file protests. See Subpart B of this part.

(b) If no one opposes the application, the grant published in the *FMCSA Register* will become effective by issuance of a certificate, permit, or license.